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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE MAXINE M. CHESNEY, JUDGE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	<b>No. CR 18-465 MMC</b>
	)	
UNITED MICROELECTRONICS	)	
CORPORATION, INC.	)	
	)	
Defendant.	)	
_____	)	San Francisco, California
		Wednesday, October 28, 2020

**TRANSCRIPT OF PROCEEDINGS VIA ZOOM WEBINAR**

**APPEARANCES:** (via Zoom)

For Plaintiff:

DAVID L. ANDERSON  
UNITED STATES ATTORNEY  
450 Golden Gate Avenue, 11th Floor  
San Francisco, California 94102  
**BY: LAURA VARTAIN HORN**  
**ASSISTANT UNITED STATES ATTORNEY**

U.S. DEPARTMENT OF JUSTICE  
National Security Division  
950 Pennsylvania Ave, N.W.  
Washington, DC 20530  
**BY: NICHOLAS O. HUNTER**  
**TRIAL ATTORNEY**

(Appearances continued on next page)

Reported By: Katherine Powell Sullivan, CSR #5812, CRR, RMR  
Official Reporter - U.S. District Court

**APPEARANCES:** (via Zoom - continued)

For Defendant UMC:

LATHAM & WATKINS LLP  
505 Montgomery Street, Suite 2000  
San Francisco, California 94111  
**BY: LESLIE CALDWELL, ESQ.**  
**TYLER PAUL YOUNG, ESQ.**

**Also Present:**

**Lucas S. Chang, General Counsel**  
**United Microelectronics Corporation**

**Jessica Goldsberry**  
**U.S. Probation**

For Micron Technology, Inc:

JONES DAY  
1755 Embarcadero Road  
Palo Alto, California 94303  
**BY: NEAL J. STEPHENS, ESQ.**

Wednesday - October 28, 2020

2:14 p.m.

P R O C E E D I N G S

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**THE COURT:** All right. Good afternoon. I think we have everyone.

Could I ask the clerk to call the case, please.

**THE CLERK:** Yes, Your Honor.

Please come to order. This court is now in session. The Honorable Judge Chesney presiding.

Calling Criminal action 18-cr-465, USA versus United Microelectronics Corporation.

Counsel, beginning with Government counsel, state your appearances, please.

**MS. VARTAIN:** Good afternoon, Your Honor. Laura Vartain and Nic Hunter for the United States.

**THE COURT:** Okay. You're a little bit fuzzy. Not legally or mentally, but as far as the audio goes. I'm not quite sure why. Hopefully, that won't be a problem. Thank you.

And then who's appearing, then, this afternoon on behalf of the defendant?

**MS. CALDWELL:** Your Honor, good afternoon. This is Leslie Caldwell on behalf of United Microelectronics Corporation.

**THE COURT:** All right. You're coming through fine.

1 Thank you, Ms. Caldwell.

2 **MS. CALDWELL:** Thank you.

3 **THE COURT:** Do we have someone here, then, from the  
4 U.S. Probation Office?

5 **MS. GOLDSBERRY:** Good afternoon, Your Honor. Jessica  
6 Goldsberry from the Probation Office.

7 **THE COURT:** Thank you.

8 Okay. Is there anyone else who wants to make an  
9 appearance? Apparently not.

10 I might suggest, we have a couple of lawyers who are  
11 appearing, an additional lawyer on behalf of the defendant,  
12 apparently, and also someone from Micron.

13 Does Micron's counsel want to state their appearance that  
14 they're here in connection with this proceeding?

15 **MR. STEPHENS:** Yes, Your Honor. Good afternoon. Neal  
16 Stephens, from Jones Day, on behalf of Micron.

17 **THE COURT:** All right. Thank you.

18 **MS. CALDWELL:** And, Your Honor, this is Leslie  
19 Caldwell. I'm sorry, I neglected to introduce two people, one  
20 of whom is the most important person here other than Your  
21 Honor.

22 The first is Lucas Chang, who is the general counsel of  
23 United Microelectronics Corporation. And he is in Taiwan. And  
24 we've previously submitted a power of attorney signed by the  
25 chairman of the company authorizing him to enter this plea.

1 Also present is my colleague Tyler Young.

2 **THE COURT:** All right. Very good.

3 All right. If I could just indicate that we are appearing  
4 in an official proceeding on this criminal case. The  
5 appearances are electronic. We are engaged in this endeavor  
6 during the course of the coronavirus pandemic. As a result,  
7 there are general orders that have been issued by the Northern  
8 District of California placing certain restrictions on  
9 proceedings being conducted in person in light of health  
10 concerns for both the general public and also the participants  
11 in any given proceeding.

12 There is a possibility that this case could have proceeded  
13 in part in person, but it is my understanding that,  
14 particularly given Mr. Chang's locale and all of the other  
15 concerns about health in general, that the -- both parties,  
16 both the Government and the defendant, preferred that we  
17 proceed by way of a video hearing using the Zoom function.

18 Is that correct as far as the Government's position,  
19 Ms. Vartain?

20 **MS. VARTAIN:** It is. Thank you.

21 **THE COURT:** Okay. Is there any way to turn your  
22 volume up?

23 **MS. VARTAIN:** I will try.

24 **THE COURT:** Okay. And on behalf of the defendant,  
25 Ms. Caldwell?

1           **MS. CALDWELL:** Yes, that's our understanding, Your  
2 Honor. Thank you.

3           **THE COURT:** All right. In other words, you and your  
4 client agree that we can proceed in this fashion as opposed to  
5 an in-person hearing.

6           **MS. CALDWELL:** Yes, Your Honor.

7           **THE COURT:** All right. Thank you.

8           And we do -- for the record, the matter is being reported  
9 by an official court reporter.

10          And do you just want to state your name for the record.

11          **REPORTER:** Good afternoon, Your Honor. This is  
12 Katherine Sullivan, the court reporter.

13          **THE COURT:** Thank you.

14          All right. And then, Mr. Ybarra, who is filling in for  
15 our regular courtroom deputy clerk, will be taking minutes of  
16 the proceedings.

17          This is an official proceeding even though we're all  
18 looking at each other on the screen at this point. I am not  
19 sitting in the courtroom. This is a virtual background. I've  
20 mentioned before that on occasion virtual backgrounds tend to  
21 blur when people move around. If that becomes distracting, I  
22 will repair to my chambers where I actually am sitting at this  
23 time.

24          Okay. I want to indicate what I understand we're going to  
25 try to accomplish this afternoon. This is a circumstance in

1 which a corporate defendant, through their designee, Mr. Chang,  
2 is proposing to enter a plea of guilty to a Superseding  
3 Information.

4 I will need to discuss with Mr. Chang, essentially, his  
5 waiver of an indictment, if that is what he is prepared to do,  
6 and to arraign him on the Superseding Information.

7 In addition, the parties have anticipated that if  
8 Mr. Chang does go forward under a plea agreement and enters a  
9 plea of guilty on behalf of the defendant, United  
10 Microelectronics Corporation -- and I'll shorten that, as most  
11 of us have been doing, to UMC -- then the parties also wish to  
12 waive the preparation of a formal full Probation Report and,  
13 instead, have the Court go forward with sentencing this  
14 afternoon in accordance with a plea agreement that is entered  
15 pursuant to a Rule 11(c)(1)(C) of the Federal Rules of Criminal  
16 Procedure.

17 So is that everyone's understanding as to what we are  
18 going to do this afternoon in the course of this hearing?

19 **MS. VARTAIN:** For the Government, it is. Thank you.

20 **THE COURT:** Thank you. And you're coming in better  
21 now, Ms. Vartain. Thank you.

22 **MS. CALDWELL:** For UMC, that is also correct, Your  
23 Honor.

24 **THE COURT:** Thank you, Ms. Caldwell.

25 Okay. So let me tell you the documents that I do have and

1 just make sure that I'm not missing any. I have the Plea  
2 Agreement. And at this time I have a copy of a signed version  
3 of the Plea Agreement.

4 Was this signed with Mr. Chang in -- he's in Taiwan -- no.  
5 Where's Mr. Chang located now?

6 **MS. CALDWELL:** He's in Taiwan, Your Honor.

7 **THE COURT:** Taiwan. That's what I thought.

8 **MS. CALDWELL:** And he signed the document while in  
9 Taiwan and sent it to me electronically.

10 **THE COURT:** Okay. So a copy of this will ultimately  
11 need to be E-filed. And I will ask the clerk how he wishes to  
12 have that done.

13 Just so that we're clear, there were several different  
14 versions of the Plea Agreement that I received. I received  
15 version 1, that was substituted with version 2 to correct  
16 typographical errors.

17 Then I received version 3, which I believe is the most  
18 recent version, that included some substantive changes and  
19 then, very most recently, a signed copy of that Agreement.

20 What I want to find out -- and I'll just ask  
21 Ms. Vartain -- were any changes made between the time that I  
22 received a number 3, essentially unsigned, and then received  
23 the signed version that I have in my hand at this point?

24 **MS. VARTAIN:** No, Your Honor. And the change -- the  
25 changes between 1 and 2 was to correct the -- the special

1 assessment from \$100 to the \$400 for the corporate special  
2 assessment pursuant to Chapter 8.

3 **THE COURT:** Yes. Well, you may be calling 2 what I'm  
4 calling 3. I'm not sure.

5 **MS. VARTAIN:** Okay.

6 **THE COURT:** Okay.

7 **MS. VARTAIN:** Okay. But no -- no changes from -- from  
8 3, then, to the signed Agreement that the Court now has.

9 **THE COURT:** All right. Thank you. Okay.

10 So I will probably work off, then, the unsigned copy,  
11 ultimately, because any questions or notes that I made on that  
12 I didn't want to start making them again and on something that  
13 may get scanned.

14 All right. Now, I also received a document, as  
15 Ms. Caldwell pointed out, Power of Attorney, and also a Waiver  
16 of Indictment.

17 I have the Sentencing Memoranda from the two parties.  
18 Those were filed on behalf of both parties on October 21,  
19 separate statements but both filed on the same date. And then  
20 I have the Superseding Information that was filed October 26th.

21 And then, lastly, what was forwarded to me was an email  
22 that went to the, quote, victim witness coordinator at the  
23 U.S. Attorney's Office. It is a Victim Impact Statement on  
24 behalf of Micron.

25 And I just wanted to mention that in that statement Micron

1 states they don't oppose the Plea Agreement. They don't feel  
2 that this amount of the fine that is contemplated by the  
3 Agreement makes Micron whole, but, nonetheless, they're not  
4 opposing the Plea Agreement.

5 They do point out that they would like the civil case to  
6 move ahead, once a stay could be lifted, if the criminal case  
7 against UMC is resolved today. And I would suggest in that  
8 regard that counsel for Micron then file a motion to lift the  
9 stay or a stipulation to lift the stay, if you can obtain that  
10 agreement, either way, and a proposed date for a case  
11 management conference in that document so that we can move  
12 ahead in some orderly fashion if that's appropriate. And it  
13 most likely is.

14 **MR. STEPHENS:** Your Honor, we shall do so.

15 **THE COURT:** All right. So let's turn to -- oh, you  
16 were just saying you'll do it?

17 **MR. STEPHENS:** Yes, Your Honor. We intend to do so.  
18 We did meet and confer. UMC has not agreed to our request to  
19 lift the civil stay, so we will file our motion.

20 **THE COURT:** Oh, okay. That's fine. At that time, if  
21 you file the request to lift the stay, then UMC will have an  
22 opportunity to present their objections to doing so, why they  
23 feel it's not appropriate. You can file a reply, and we'll see  
24 where we are at that point.

25 Okay. So the original Indictment had charges beyond what

1 are contained in the Superseding Information. And this  
2 document is being filed in order to effectuate a Plea  
3 Agreement.

4 Mr. Chang, there are a number of things that I need to go  
5 over with you, sir. The arraignment, the waiver of the  
6 Indictment, your intent to enter a plea on behalf of the  
7 company; all of these can be merged, to a certain extent, into  
8 one proceeding.

9 I was making an effort to avoid you having to make a  
10 separate appearance in front of a magistrate judge. Although I  
11 don't do these types of arraignments ordinarily, hopefully I  
12 can get whatever information you need in front of you so that  
13 you can make a reasoned decision to go forward on the  
14 Superseding Information or not.

15 So let's take that one step at a time because I do have to  
16 go over all of this, including the Plea Agreement, where it may  
17 seem that you've already told me in writing, the law requires  
18 me to do this orally with you, here in court, which we are  
19 essentially in.

20 And your answers should be under oath, so I'm going to ask  
21 you to raise your right hand and I'm going to ask Mr. Ybarra,  
22 our clerk, to administer an oath at this time.

23 **THE CLERK:** Yes, Your Honor.

24 **THE COURT:** Thank you.

25 (Oath administered to Mr. Chang.)

1           **THE CLERK:** Thank you, sir.

2           **THE COURT:** Thank you. All right. You can put your  
3 hand down now. Thank you.

4           All right. In the Superseding Information there is a  
5 single charge, and it alleges theft of trade secrets,  
6 specifically from in or about 2015 to in or about 2018 in the  
7 Northern District of California and elsewhere.

8           It is alleged that the defendant, UMC, knowingly and with  
9 the intent to convert a trade secret, and then it specifies  
10 Trade Secret 5, recorded an Excel spreadsheet with the digital  
11 file name DR25NMS, design rules periphery -- I won't try and  
12 read all of the description because it's very long and will be  
13 hard for the reporter to take down.

14           It goes on to say that's a trade secret used in and  
15 intended for use in interstate and foreign commerce to the  
16 economic benefit of someone other than the owner, Micron  
17 Technology, Inc., and then knowing that the offense would  
18 injure Micron, and that UMC knowingly received and possessed  
19 Trade Secret 5, and knowing Trade Secret 5 to have been stolen,  
20 appropriated, obtained, and converted without authorization.

21           Have you been over this Superseding Information with  
22 counsel, Ms. Caldwell?

23           **MR. CHANG:** Your Honor, yes, I have.

24           **THE COURT:** Okay. Very good. Thank you.

25           Are you satisfied you do understand the somewhat wordy

1 language in the Superseding Information?

2 **MR. CHANG:** Yes, I do, Your Honor.

3 **THE COURT:** Okay. Thank you.

4 Now, ordinarily, Mr. Chang, you have a right -- and I'll  
5 just say you. Maybe I should say UMC. UMC has a right to be  
6 charged, if they are going to be charged, by an indictment.

7 An indictment requires that the Government, Ms. Vartain in  
8 all likelihood, present to a grand jury the evidence that they  
9 think is sufficient for the grand jury to vote an indictment.  
10 They have to have -- I believe it's at least 16 grand jurors,  
11 and they need 12 to bring in an indictment.

12 Is that correct, Ms. Vartain?

13 **MS. VARTAIN:** It is, Your Honor.

14 **THE COURT:** All right. Just to confirm that.

15 And they don't have to find that a defendant's guilt has  
16 been proved beyond a reasonable doubt, unlike the trial jury,  
17 but they have to find there's sufficient evidence to require  
18 the defendant to actually have to stand trial. And that is  
19 sometimes referred to as probable cause to believe that the  
20 defendant committed the offense.

21 So do you understand that UMC has a right to actually have  
22 a grand jury bring an indictment, and if they don't, that UMC  
23 would not be facing this particular charge?

24 **MR. CHANG:** Yes, Your Honor. Yes, I understand.

25 **THE COURT:** Is it your desire to give up the right on

1 behalf of UMC and proceed, instead, under the document that is  
2 titled Superseding Information?

3 **MR. CHANG:** Yes, Your Honor.

4 **THE COURT:** Okay. For purposes of the exposure, so to  
5 speak, in other words, what is the most that someone facing an  
6 indictment like this could be sentenced to, we can talk about  
7 that later.

8 Ordinarily, I might talk to you about it now, but it's  
9 going to come up in connection with the Plea Agreement, or I  
10 can -- if Ms. Vartain and Ms. Caldwell think it's more  
11 appropriate, I can discuss it now and go over it again if  
12 necessary.

13 Do counsel have a preference in that regard?

14 **MS. VARTAIN:** I think it's fine to handle in the  
15 context of the Plea Agreement, Your Honor.

16 **THE COURT:** Ms. Caldwell?

17 **MS. CALDWELL:** That's fine with UMC, Your Honor.

18 **THE COURT:** Okay. Let me ask, does anyone feel that I  
19 should be advising Mr. Chang of anything else in connection  
20 with his decision to essentially waive an indictment?

21 **MS. VARTAIN:** No, Your Honor.

22 **MS. CALDWELL:** We agree, Your Honor.

23 **THE COURT:** Okay. Let me just say I have a Waiver of  
24 Indictment, and it is signed at this time by Ms. -- it's not  
25 by. All right.

1 I think this is your signature, is it, Mr. Chang, to the  
2 waiver? I don't know how to show this without doing file  
3 share, and I'm a little concerned about what will happen if I  
4 start playing with this. I'm not even sure if I can do it  
5 here.

6 So, I think, let me just ask you, did you sign a waiver?

7 **MR. CHANG:** Yes, Your Honor.

8 **THE COURT:** Okay. Before you signed it, did you  
9 discuss the implications and, essentially, the pros and the  
10 cons of going ahead under the Information as opposed to  
11 demanding an indictment?

12 **MR. CHANG:** Yes, we did.

13 **THE COURT:** Okay. I guess I should say one of the  
14 reasons you're entitled to an indictment is because the charge  
15 in even the Superseding Information is a felony; in other words  
16 a crime that can be punished by more than a year.

17 For lesser crimes with lesser penalties, they don't  
18 necessarily need an indictment. They can file a complaint for  
19 the same goal.

20 Okay. And I also have a Power of Attorney. Now, this was  
21 signed, Ms. Caldwell, let's see, by someone --

22 **MS. CALDWELL:** It was signed, Your Honor, by the  
23 chairman of UMC, Stan Hung.

24 **THE COURT:** Is this a man or a woman?

25 **MS. CALDWELL:** It's a man.

1           **THE COURT:** A man. All right. So Mr. Hung signed  
2 that.

3           Ultimately, either after this proceeding or during it,  
4 Mr. Ybarra, I need to confer with you about how we are to file  
5 these documents. They are official. They should be part of  
6 the court file. And if I do accept a plea from Mr. Chang on  
7 behalf of UMC, then we'll have to file the signed Plea  
8 Agreement as well.

9           **THE CLERK:** I understand, Judge.

10          **THE COURT:** All right. Thank you.

11          All right. Well, then I'm going to go ahead and go over  
12 the Plea Agreement with Mr. Chang.

13          All right. This Plea Agreement is in a little different  
14 form than the Court ordinarily experiences because usually we  
15 have defendants who are individuals named as defendants and not  
16 corporate entities. So there are some distinctions.

17          We've just mentioned in brief the nature of the crime  
18 briefly described as theft of trade secrets. This is pursuant  
19 to Title 18 of the United States Code Section 1832 subpart  
20 (a)(3). That is a felony, as mentioned.

21          And I did describe, as set forth in the Superseding  
22 Information, the facts that the Government alleges underlie  
23 this particular count. There was just the one count.

24          Every crime has elements that the Government would have to  
25 prove if somebody decided to go to trial. In this instance the

1 Government would have to prove that UMC intended to convert a  
2 trade secret to the economic benefit of anyone other than the  
3 owner thereof. In other words, to use it for their own  
4 purposes and make money from it, for example.

5 That the trade secret is related to a product used in and  
6 intended for use in interstate and foreign commerce; that UMC  
7 intended that the offense would injure any owner of the trade  
8 secret and did knowingly receive and possess that trade secret  
9 information knowing that it was stolen, appropriated without  
10 authorization, obtained without authorization, or converted  
11 without authorization; i.e., somehow they got their hands on it  
12 and used it for their own purposes when they didn't have  
13 authority or approval to do so.

14 Do you understand the elements that are required to be  
15 proved by the Government, for example, if UMC went to trial,  
16 Mr. Chang?

17 **MR. CHANG:** Your Honor, yes.

18 **THE COURT:** Okay. Thank you.

19 And even if you nod, by the way, I'll still have to ask  
20 you to say the answer aloud because the court reporter can only  
21 take down oral responses.

22 Okay. Then every crime under this statutes here, federal  
23 law, has a maximum penalty, sometimes a minimum as well.

24 In this instance, the maximum fine is an amount of no more  
25 than, whichever is larger, \$5 million or three times the value

1 of the stolen trade secret to the organization, including  
2 expenses for research and design and other costs of reproducing  
3 the trade secret that the organization has thereby avoided; any  
4 restitution also to be determined by the Court; and forfeiture  
5 of anything that was obtained unlawfully.

6 Ms. Vartain, if I could go to you for a moment, you  
7 understand this to mean then that -- three times the value of  
8 the stolen trade secret to the defendant; is that correct?

9 **MS. VARTAIN:** Yes, Your Honor.

10 **THE COURT:** Okay. By "organization," in other words,  
11 you're referring to the defendant, not to the party from whom  
12 it was allegedly stolen?

13 **MS. VARTAIN:** Correct.

14 **THE COURT:** All right. You understand that as well,  
15 Mr. Chang?

16 **MR. CHANG:** Sorry. Mute. Yes, Your Honor.

17 **THE COURT:** Okay. I might suggest, unless there's  
18 something really going on in a noisy fashion wherever you're  
19 located, that you go ahead and leave your microphone on rather  
20 than mute it, because I'm going to have to keep asking you  
21 questions, you're going to have to keep answering them, and  
22 rather than have to keep disengaging the mute, it may be  
23 easier.

24 If for any reason there is something going on there and  
25 you want to make sure that there's no background noise, then

1 feel free to use the mute, whichever works best for you.

2 I should perhaps have gone over with you, just to make  
3 sure, that the signed version I have was signed by you. So let  
4 me go back to that for just a moment.

5 On the last page, Lucas S. Chang is listed as having  
6 signed the Plea Agreement on October 26 of this year.

7 And did you sign the Agreement, sir?

8 **MR. CHANG:** Yes, Your Honor.

9 **THE COURT:** Thank you.

10 And then, Ms. Vartain and Ms. Caldwell, those are your  
11 signatures on the same date as well; is that correct?

12 **MS. CALDWELL:** Yes, Your Honor.

13 **MS. VARTAIN:** Yes, Your Honor.

14 **THE COURT:** Thank you.

15 So, Mr. Chang, before you signed -- I may start coughing.  
16 I think the dust circulating in this room is sort of a problem,  
17 and if I -- I've got something here that I can drink if I start  
18 getting something in my throat.

19 Before you signed it, did you have enough time to discuss  
20 it with your lawyer?

21 **MR. CHANG:** Yes, we did.

22 **THE COURT:** Okay. Was there anyone else also that  
23 was, you know, part of the discussion? You don't have to name  
24 them, but anyone else who might have been interested, did they  
25 have a chance to also discuss this or get answers from

1 Ms. Caldwell?

2 **MR. CHANG:** Yes, they did.

3 **THE COURT:** Okay. Do you feel confident that you  
4 understand it, everything in it, the Plea Agreement?

5 **MR. CHANG:** Yes, Your Honor.

6 **THE COURT:** Okay. Then I'll keep going.

7 All right. So we just discussed the penalties.

8 The Court understands, because it's a corporate defendant,  
9 that there isn't the potential for a prison sentence.

10 Is that correct, Ms. Vartain?

11 **MS. VARTAIN:** That is, Your Honor.

12 **THE COURT:** Okay. Let me see what else I wanted to  
13 talk about. I think I'm going to go to -- oh, well, we haven't  
14 discussed here the penalty assessment. Is that listed in the  
15 Plea Agreement? I just realized it's not -- I don't think it's  
16 here in paragraph 1, which covered both elements and penalties.

17 **MS. VARTAIN:** Your Honor, the --

18 **THE COURT:** Go ahead.

19 **MS. VARTAIN:** The Court is correct, it's not in  
20 paragraph 1, but paragraph 10 specifies the special assessment  
21 pursuant to the guidelines provision.

22 **THE COURT:** Okay.

23 **MS. VARTAIN:** It's \$400.

24 **MS. CALDWELL:** Yes, Your Honor. It's 10d. on page 13,  
25 line 24.

1           **THE COURT:** Thank you. It got a little bit separated,  
2 and so let me just go back to that. Yes. All right.

3           Frankly, of less concern to UMC, I'm sure, but,  
4 nonetheless, the Court has to impose -- in other words, a  
5 maximum is one thing, but the Court has to impose a \$400  
6 special assessment per count.

7           All right. So that is in paragraph 10d., that's on page  
8 13. Compared to what, you know, the actual agreement is here,  
9 this is not significant and, frankly, is not significant to  
10 most defendants. But it is something that the Court has to  
11 impose and is ordinarily due immediately even if somebody  
12 couldn't pay it immediately.

13           The other penalties that I talked about, in terms of the  
14 fine, are a maximum. In other words, the very most anyone  
15 could get. A lesser amount could be ordered as a fine, but the  
16 Court is required to order the \$400. So I just want to make  
17 that clear.

18           All right. Okay. Let me go back for a minute to what I  
19 wanted to do, which was just to go over rights. There is a  
20 large discussion of facts, which we'll go back to, but I want  
21 to -- before we get to that, before I ask you if these facts  
22 are correct, UMC has all the rights that an individual U.S.  
23 citizen would have in connection with a criminal prosecution.  
24 That means a right to a jury trial. It can't be found guilty  
25 of anything unless all 12 jurors are satisfied UMC's guilt was

1 proved beyond a reasonable doubt.

2 UMC has a right to have counsel representing itself  
3 throughout the proceedings. If they couldn't afford a lawyer,  
4 they would have one appointed. But, obviously, UMC can afford  
5 a lawyer, and you have Ms. Caldwell appearing on UMC's behalf.

6 At trial, UMC would have the right to confront and  
7 cross-examine all the witnesses the Government called against  
8 them. It would have a right to see all the evidence the  
9 Government was relying on.

10 It has a right to call witnesses on its own behalf,  
11 present evidence on its own behalf, have the Court issue  
12 subpoenas to make sure those witness and evidence were in court  
13 on behalf of UMC.

14 Someone could speak on UMC's behalf at the trial, but  
15 nobody could be forced to do that. And if UMC decided to rely  
16 on its right to remain silent, no one could comment about that  
17 or make any adverse remarks about it in any way.

18 Before trial, UMC would have certain rights as well. It  
19 could move to suppress evidence, keep it out of the trial, if  
20 it wasn't, in UMC's view, lawfully seized. It could be  
21 physical evidence, it could be a statement, any evidence they  
22 felt was not properly obtained by the Government.

23 It would be entitled to discovery. If there's more  
24 evidence the Government comes up with, they would have to give  
25 it to UMC.

1           There might be affirmative defenses. Those generally  
2           don't go to the merits of whether somebody did what's alleged,  
3           but something separate. Often it could be that the Government  
4           waited too long to bring the charge and a statute of  
5           limitations has run, something of that nature.

6           Do you understand UMC has all these rights?

7           **MR. CHANG:** Yes, Your Honor, we do.

8           **THE COURT:** Okay. And do you understand that you will  
9           give them up if you do enter a plea? UMC will be doing so if  
10          you enter a plea on its behalf.

11          **MR. CHANG:** Yes, Your Honor, we do.

12          **THE COURT:** You won't lose Ms. Caldwell, by the way.  
13          I mean, she's not going away. But she wouldn't be representing  
14          you in the context of a contested trial. She would be  
15          representing you in the context of the plea and any sentence.  
16          So I just want to make that clear.

17          Okay. Also, if UMC went to trial and it had the  
18          misfortune of being found guilty, it would have a right to  
19          appeal and to, again, if they couldn't afford counsel, to have  
20          counsel appointed at no cost for them.

21          And, also, if they wanted to bring a collateral attack,  
22          sometimes they're called a petition for a writ of habeas  
23          corpus, they could do that and raise similar or different  
24          arguments in that regard.

25          Under the Plea Agreement, UMC will give up those rights

1 both to appeal and to bring a collateral attack with one very  
2 limited exception: If they could show that they did not  
3 receive effective assistance from their attorney.

4 So do you understand UMC has these appellate rights and  
5 rights to challenge post judgment, but it's giving it up except  
6 if they could show that, essentially, Ms. Caldwell didn't give  
7 you adequate legal advice?

8 **MR. CHANG:** Yes, Your Honor.

9 **THE COURT:** Okay. And, frankly, that's a pretty slim  
10 opportunity here as you have a very experienced lawyer in the  
11 criminal law, who's very well-respected in that regard.  
12 Somebody could make a mistake, but it's not likely. So I just  
13 do want to make that clear to you.

14 Okay. Let's go back to facts for a minute. I don't think  
15 UMC would consider entering a plea just because they were  
16 nervous about going to trial. There has to be a factual basis  
17 for any plea that the Court can accept.

18 In a very lengthy account of facts, which starts with  
19 numbered item 2 and then has many subparts, there are facts  
20 laid out describing various people who essentially left Micron,  
21 came over to UMC, had knowledge from their work at Micron of  
22 confidential, protected, proprietary information, trade  
23 secrets; that they disclosed those without permission to UMC;  
24 that UMC then had those secrets to help them in developing  
25 DRAM; and that UMC does acknowledge that they are responsible

1 for the behavior of and conduct of those individuals which --  
2 who include -- and I perhaps will name them just so that we're  
3 all clear as to who the Court is talking about.

4 I'll use what are the anglicized or U.S. names. Stephen  
5 Chen. J.T. Ho. Kenny Wang or Wang, I'm not sure how he  
6 pronounces it. Let's see.

7 Did I leave anyone out of that group, Ms. Vartain? No?

8 **MS. VARTAIN:** No.

9 **THE COURT:** Okay. With Mr. Chen being more of the  
10 officer in charge who is alleged to have brought the people  
11 over and to have authorized them using the information.

12 **MS. CALDWELL:** Your Honor, may I just jump in? Sorry  
13 to interrupt. May I just clarify one point?

14 **THE COURT:** Sure. That's fine.

15 **MS. CALDWELL:** And I appreciate that the Court is  
16 summarizing because, as you noted, it is quite lengthy.

17 **THE COURT:** Yes.

18 **MS. CALDWELL:** But I just wanted to note that the  
19 actual -- the actual Plea Agreement reflects that one  
20 employee -- namely, Kenny Wang -- used Trade Secret 5, one  
21 trade secret. And --

22 **THE COURT:** Oh, as opposed to plural.

23 **MS. CALDWELL:** -- there's other information at issue,  
24 but this is really just limited to his use of Trade Secret 5  
25 while at UMC, yes.

1           **THE COURT:** Okay. Just so that we're clear --

2           **MS. CALDWELL:** There was other confidential  
3 information involved.

4           **THE COURT:** Okay. Your concern is I used the plural  
5 trade secret?

6           **MS. CALDWELL:** Yes, Your Honor, and suggested that  
7 more than one employee was sharing trade secrets.

8           **THE COURT:** Okay. Well, Trade Secret 5.

9           **MS. CALDWELL:** Yes.

10          **THE COURT:** And, of course, Micron, in their letter to  
11 me, which frankly although it says "victim," is essentially  
12 something of an *ex parte* communication in the civil case  
13 setting forth their whole view about what's going on here and  
14 how terrible everybody really is and that this doesn't spell it  
15 all out.

16          But this is what's in the Plea Agreement. And, sir,  
17 Mr. Chang, this statement as to who did what when goes on for  
18 many, many paragraphs.

19          And you've told me you have read the Plea Agreement, and  
20 I'm assuming that you read and approved this statement of  
21 facts. Is that correct?

22          **MR. CHANG:** Yes, Your Honor.

23          **THE COURT:** All right. And are all of those  
24 statements of fact, as set forth in the Agreement, true and  
25 correct in all respects?

1           **MR. CHANG:** Yes, Your Honor.

2           **THE COURT:** Okay. I don't want to hear private,  
3 confidential communications you had with counsel, but I do want  
4 to just ask you kind of a general question with -- yes or no is  
5 probably good enough.

6           Do you feel and does UMC feel that it has had enough time  
7 to explore any possible defenses that UMC might have to the  
8 charge in the Superseding Information and to explore those  
9 possible defenses with counsel for UMC?

10          **MR. CHANG:** Yes, we have.

11          **THE COURT:** Okay. Has anyone threatened you or  
12 anybody else at UMC, to your knowledge, in order to encourage  
13 UMC to change its plea or to enter a plea to this Information?

14          **MR. CHANG:** No, Your Honor.

15          **THE COURT:** Have you -- and I'm assuming the answer is  
16 no, looking at you, but just to ask you, have you consumed  
17 anything before you came to court today -- it could even be a  
18 medicine that's prescribed -- that might have a drug or alcohol  
19 in it?

20          **MR. CHANG:** No, Your Honor.

21          **THE COURT:** Thank you.

22          **MR. CHANG:** It is still early in the day.

23          **THE COURT:** Where you are. Not here.

24           And everyone appreciates that you were able to make  
25 yourself available. What time is it in Taiwan at this time?

1           **MR. CHANG:** It's about 6:00 a.m.

2           **THE COURT:** 6:00 in the morning? 6:00 a.m.

3           **MR. CHANG:** Thank you.

4           **THE COURT:** Yeah, okay.

5           **MR. CHANG:** Yes.

6           **THE COURT:** Well, a lot earlier than we are here.

7           All right. Now, let's go over that this is a Plea  
8           Agreement, just to make clear, that's under a particular  
9           provision of the criminal law rules. It decides a sentence  
10          that the parties to the case have agreed to.

11          And the Court has really only two choices. The Court can  
12          either accept the Agreement and impose the sentence that the  
13          parties have agreed to or the Court can't accept the Agreement  
14          and you essentially go back to square one and either go to  
15          trial or come up with something different.

16          So in this instance I don't see anything at the moment  
17          that would cause me not to accept the Agreement. Oftentimes,  
18          if there is a Presentence Report, I will only conditionally  
19          accept the plea without making a final commitment to going  
20          forward under it until I have the report.

21          But in this instance, given the Agreement of the parties  
22          to waive that report and that we're dealing with a corporate  
23          entity, I will in all likelihood just make the determination in  
24          the course of these proceedings today.

25          But let's go over the terms of that agreement. First of

1 all, there's a hefty fine that UMC is agreeing to pay and to  
2 pay it essentially right away. And that is \$60 million.

3 Now, I know that counsel for Micron feels that's not  
4 wholly indicative of the losses to their client, but it is not  
5 an insignificant amount of money, shall we say.

6 Then that UMC would be on what's called organizational  
7 probation for three years, and the terms are that they won't  
8 commit any more violations of any law, federal, state, or  
9 local, and that they would cooperate with the Government in  
10 accordance with the laws of the U.S. and make all monetary  
11 payments in a timely fashion.

12 The amount of restitution, which there is probably going  
13 to be a disagreement about what that is, but the amount of it  
14 and its calculation and the amount the parties are agreeing  
15 would be so involved to make that calculation in the course of  
16 the criminal proceedings that it would just delay things and  
17 slow things down so much that it falls under an exception to  
18 the Court's ordering restitution at this time and, rather,  
19 allowing that determination to be made in the course of the  
20 civil case rather than in the context of the criminal case.

21 And I think that that is likely to be correct.

22 I might ask either Ms. Caldwell or Ms. Vartain, or both of  
23 you, if you want to weigh in on this as to why you think that  
24 it would be particularly difficult to make a determination in a  
25 timely fashion in the criminal case.

1           **MS. VARTAIN:** Sure, Your Honor. With the Court's  
2 permission, I'll speak briefly first.

3           **THE COURT:** Uh-huh.

4           **MS. VARTAIN:** As the Court has highlighted, I think  
5 speed is a key factor here. We have a multiple-defendant case  
6 set for trial. The resolution here facilitates a resolution of  
7 the criminal case by seeking and getting UMC's cooperation.

8           The restitution, as the Court is aware, under the criminal  
9 restitution law requires a complex judgment. And those facts  
10 that will go into that judgment are precisely those that will  
11 be at issue in the case, both through admissions of guilt, like  
12 what UMC is making, but also in the forthcoming and upcoming  
13 trial against Jinhua as it concerns the use of the trade  
14 secrets that are alleged in the Indictment.

15           Because those issues are complex and will be part of the  
16 evidentiary record in the case, they are best delayed until the  
17 Court has the opportunity to hear those facts.

18           And, also, they will be the subject of expert testimony  
19 both from the Government and presumably from defense counsel.  
20 And the experts will opine on precisely the types of issues  
21 that will be implicated in the restitution determination.

22           And for those reasons, in order to secure the guilty plea  
23 today and keep the case against the rest of the defendants  
24 moving, the Government believes that the provisions set forth  
25 in the agreement are appropriate to invoke and to find in this

1 instance.

2 **THE COURT:** Yeah, I understand you were saying in your  
3 agreement that it would be complex. I was asking why it's  
4 complex. You have made one statement in that regard that there  
5 are going to be dueling experts on the amount of loss.

6 And in this instance it's not like someone simply took  
7 money directly from someone as you might have in, oh, a  
8 securities fraud case, for example, where somebody bought the  
9 security or in a business scam case where someone invested in,  
10 really, a nonexistent business.

11 There will have to be, as I understand it, a showing of  
12 what the value is of the secrets and how it damaged Micron.

13 Would that be a kind of a quick summary?

14 **MS. VARTAIN:** Yes, quick summary. And correct  
15 emphasis on the damage as well, Your Honor.

16 **THE COURT:** Well, that is what we're talking about.

17 **MS. VARTAIN:** Yes.

18 **THE COURT:** Restitution is to pay someone back for  
19 their loss or damage. Okay.

20 Ms. Caldwell, did you want to weigh in on this at all, or  
21 is the record complete as sufficient in your view?

22 **MS. CALDWELL:** Your Honor, I echo what Ms. Vartain  
23 said. And I'll just add one thing, which is, as I think the  
24 Court has already noted earlier in this proceeding, there is a  
25 great gulf and disparity between what the victim believes to be

1 the value of the trade secrets and what we believe to be the  
2 value of the trade secrets.

3 I think that would be very complicated and can effectively  
4 be resolved in the civil case that is also before Your Honor.

5 **THE COURT:** All right. I tend to agree. And so, just  
6 so the record was clear, some of this was then spelled out a  
7 little more.

8 You know, because this agreement is a little different  
9 than the ones that I usually look at, I do want to make sure  
10 that we've covered -- let me go back to what you've agreed to  
11 again, because I ended by making the comment about the  
12 restitution and, of course, the special assessment that we got  
13 in -- discussed earlier, when I was asking about it.

14 The -- UMC's agreeing to complete a particular financial  
15 form, and to do that in a limited period of time. I don't know  
16 if there's much else.

17 Let me ask -- first of all, I'll just go to Ms. Vartain  
18 first.

19 Ms. Vartain, is there anything that you would like me to  
20 take up in connection with the Plea Agreement and discussing  
21 with Mr. Chang other than what we've already talked about?

22 It could be something that's just a general admonition  
23 that I might have overlooked in some way, or it could be  
24 something specific to this Plea Agreement that you would like  
25 to emphasize in some fashion.

1           **MS. VARTAIN:** No, Your Honor. The advisements, I  
2 think, were comprehensive.

3           The only thing I've heard and I want to be sort of precise  
4 on is that when the Court referred to cooperation, I think the  
5 Court said in accordance with the laws of the United States.  
6 It's cooperation following the provisions of paragraph 9 of the  
7 Plea Agreement, and paragraph 9 sets out specific instances of  
8 the cooperation that the Government will be seeking promptly in  
9 this case.

10           **THE COURT:** I'm not sure if I tied the cooperation to  
11 the laws. But if I did, I didn't mean to. There was a  
12 reference to the laws that might have been, oh, I don't know  
13 where I was looking at it now. So -- but, no, I understand  
14 it's in accordance with what's laid out in paragraph 9. And if  
15 I connected two terms inadvertently, I didn't mean to. Thank  
16 you.

17           What about you, Ms. Caldwell, anything you want to add to  
18 this or have me add to it?

19           **MS. CALDWELL:** No, Your Honor. I just wanted to  
20 clarify one minor point, and that is with regard to the  
21 financial statement that UMC may be asked to fill out.

22           **THE COURT:** Yes.

23           **MS. CALDWELL:** Their obligation to do so is dependent  
24 on whether they're actually asked to do so by the Financial  
25 Litigation Unit.

1           **THE COURT:** Oh, okay. In other words, if nobody asks  
2 them, they don't have to do it.

3           **MS. CALDWELL:** Correct.

4           **THE COURT:** Okay. Fine. They'll probably ask.

5           Okay. So let me ask you, Mr. Chang, is there anything  
6 that you have a question about that you either want to ask me  
7 or Ms. Caldwell, perhaps? If you can do that. You could even  
8 do it, I suppose, by phone privately, if you needed to, with  
9 Ms. Caldwell.

10          But anything you need answered at this time, sir?

11          **MR. CHANG:** Thank you, Your Honor. No, not at this  
12 time.

13          **THE COURT:** All right. Then I am going to turn to the  
14 Superseding Information. And I have read that earlier. And I  
15 may simply describe it summarily, having read all of it  
16 previously, or I could read it again. It's just when we get to  
17 the design rules it's really long.

18          Well, if the court reporter needs that, it is all set out  
19 in the docket in the Superseding Information. So maybe I'll  
20 read it just to be extra careful.

21          All right. Then, Mr. Chang, I'm going to turn to the  
22 Superseding Information and read it to you. And it alleges  
23 that UMC violated Title 18 of the United States Code Section  
24 832(a)(3), briefly described as theft of trade secrets.

25          And, more particularly, that from in or about 2015 to in

1 or about 2018, in the Northern District of California and  
2 elsewhere that the defendant, UMC, did knowingly and with the  
3 intent to convert a trade secret, specifically Trade Secret 5 -  
4 recorded in an Excel spreadsheet with the digital filename  
5 "[DR25nmS] Design rules Periphery\_EES\_2012000023-013) Rev.13" -  
6 which is a trade secret used in and intended for use in  
7 interstate and foreign commerce to the economic benefit of  
8 someone other than the owner, Micron Technology, Inc. and  
9 knowing that the offense would injure Micron; knowingly  
10 received and possessed Trade Secret 5; and knowing Trade Secret  
11 5 to have been stolen or appropriated, obtained and converted  
12 without authorization.

13 All right. To that charge, as fully set out in the  
14 Superseding Information on behalf of United Microelectronics  
15 Corporations, Inc., what is the defendant's plea?

16 **MR. CHANG:** We plead guilty to this.

17 **THE COURT:** All right. Thank you.

18 I am going to accept the guilty plea. I do find that the  
19 defendant was advised of his rights; that he has knowingly and  
20 voluntarily waived them; that the defendant also, through  
21 Mr. Chang, has executed the Plea Agreement knowingly and  
22 voluntarily.

23 So I will direct that the Plea Agreement be filed, also  
24 that the Waiver of Indictment be filed. I do find that an  
25 indictment was knowingly and voluntarily waived. And, also,

1 that the Power of Attorney provided by Mr. Hung be filed.

2 Then the next stage, I gather, is to turn to the  
3 sentencing, if both sides do ask the Court to proceed today,  
4 and both sides have -- and if they both do waive the  
5 preparation of a formal report by the U.S. Probation Office.

6 Does your client do so, Ms. Vartain?

7 **MS. VARTAIN:** For the Government, yes, Your Honor.

8 **THE COURT:** And Ms. Caldwell?

9 **MS. CALDWELL:** Yes, on behalf of UMC.

10 **THE COURT:** All right. And you are in accord with  
11 this as well, Mr. Chang, that I go forward with the sentencing  
12 this morning in Taiwan and this afternoon here?

13 **MR. CHANG:** Yes, Your Honor.

14 **THE COURT:** All right. Then I want to again turn to  
15 the documents that I have.

16 I've indicated earlier that each side filed a separate  
17 Sentencing Memorandum. They are in accord as to what the  
18 appropriate sentence should be. And I'm just going over it  
19 just to check a couple of things now.

20 Okay. In the defendant's statement, of course, aside from  
21 indicating what would be an appropriate sentence, the defendant  
22 has set forth a series of facts that they feel justify the  
23 plea. Some of those may not be fully accepted in the civil  
24 case, but it's what the defendant is setting out here.

25 Then we have the Government's memorandum. And, again,

1 they set out what they feel an appropriate sentence should be  
2 and also, excuse me, a number of facts which they summarize  
3 briefly, those facts having been laid out in detail in the Plea  
4 Agreement.

5 The original Indictment had alleged against UMC three  
6 counts of conspiracy; one to commit espionage, one to commit  
7 theft of trade secrets, and one to commit espionage in the form  
8 of receiving and possessing stolen trade secrets.

9 All right. The fine range, according to the Government's  
10 calculations -- and they have given me a very, very detailed  
11 set of figures and calculations as to how they arrived at what  
12 they did, and they have determined the offense level to be 32.  
13 And the fine range going along with that would be 42 million to  
14 84 million. They say that they have selected a midrange,  
15 essentially, fine of 60 million.

16 In the Memorandum, Ms. Vartain, you've made reference to a  
17 \$100 special assessment, but it's different in the Plea  
18 Agreement.

19 And do you want to explain that differential?

20 **MS. VARTAIN:** Sure, Your Honor. I think it's a --  
21 something that the Government missed at the time that we  
22 originally drafted the Plea Agreement and, therefore,  
23 incorporated into the Sentencing Memorandum.

24 But Chapter 8 of the guidelines specifies that the  
25 organizational special assessment is \$400 in 8E1.1 as opposed

1 to the more traditional individual assessment of \$100.

2 **THE COURT:** Okay. Thank you. Now, organizational  
3 Probation, does that mean, then, unsupervised?

4 **MS. VARTAIN:** Yes. It will be unsupervised in this  
5 case.

6 **THE COURT:** Okay. So it is essentially a tale where  
7 the defendant needs to conduct itself in a lawful fashion or  
8 risk a motion or a petition finding them -- or alleging they're  
9 in violation as well as any new offense that somebody might  
10 want to specify.

11 Okay. Then, Ms. Caldwell, if I could just confer with you  
12 for a minute on this, or confirm, perhaps, or both.

13 Ms. Vartain has gone through this whole calculation,  
14 looking at the various guidelines and how you determine a range  
15 here for potential fines and how you then also come up with  
16 offense levels and how those get added up. And she has a  
17 chart, which is helpful to make it clear how she arrived at  
18 what she did.

19 Both as to the offense level and the fines, are you in  
20 accord with what she's done here?

21 **MS. CALDWELL:** Yes, we are, Your Honor.

22 **THE COURT:** All right. Thank you.

23 It's pretty involved, frankly, to make these  
24 determinations with a lot of back and forth amongst the various  
25 guidelines, somewhat akin to trying to figure out the Tax Code,

1 but maybe not quite the same.

2 Okay. So I am going to find that these are -- this is the  
3 guideline range for the fine. There is no imprisonment range.  
4 I will agree that the offense level is correctly stated.

5 And, for corporations, what do you do about criminal  
6 history then?

7 **MS. CALDWELL:** Your Honor, it would be factored in,  
8 but UMC has no criminal history.

9 **THE COURT:** All right. That's what I understood.

10 So that you have a criminal history of -- I guess it's I,  
11 which is no criminal history or one point, either one. They  
12 have none.

13 Okay. Then what we're doing at this time is just to  
14 indicate that I have considered the factors under 18 U.S.C.  
15 Section 3553 and any other factors or elements that might be  
16 relevant, including the character of the defendant, the  
17 seriousness of the offense, the need to impose a sentence that  
18 would have a deterrence not only for the individual defendant  
19 entity here but also for any other either individuals or  
20 entities that might be contemplating committing a crime of this  
21 nature, the need to protect the public, and what would be a  
22 just sentence that is not markedly out of step with what other  
23 similarly situated entities would receive for similar conduct.

24 And I do think that, in particular, having gone through  
25 the detail provided by the Government's counsel, that this does

1 seem to be a sentence that fits within all of those  
2 considerations without doing an injustice in that regard.

3 So let me just take a moment then.

4 Does the Government wish to add anything for the record in  
5 connection with the sentencing?

6 **MS. VARTAIN:** No. Thank you, Your Honor.

7 **THE COURT:** Does counsel for UMC wish to add anything  
8 in connection with the sentencing?

9 **MS. CALDWELL:** No.

10 **THE COURT:** All right. Now, Mr. Chang --

11 **MS. CALDWELL:** No, thank you. Your Honor.

12 **THE COURT:** Okay. Mr. Chang, just to let you know,  
13 every defendant has a right to be heard before judgment is  
14 imposed. There is no requirement that you say anything at all.  
15 But you do have that right.

16 So I would just ask you, do you wish to say anything at  
17 this time on behalf of UMC, or do you wish to just submit the  
18 matter on the written and oral presentation by your attorney?

19 **MR. CHANG:** Uhm, yes, Your Honor. And thank you.

20 **THE COURT:** So do you wish to submit or do you wish to  
21 add anything on behalf of the company?

22 **MR. CHANG:** No. We're not adding anything.

23 **THE COURT:** All right. Then I'm going to deem the  
24 matter submitted.

25 Is there any reason, then, for the Court -- any reason why

1 the Court should not proceed at this time to impose sentence  
2 and judgment?

3 **MS. CALDWELL:** No, Your Honor.

4 **MS. VARTAIN:** Not from the Government, Your Honor.

5 **MS. CALDWELL:** Nor for UMC.

6 **THE COURT:** Thank you.

7 Then in accordance with the Plea Agreement under Rule  
8 11(c)(1)(C) of the Federal Rules of Criminal Procedure and  
9 having considered the factors that are required to be  
10 considered in this matter under Section 3553 and any other  
11 relevant information, the Court does at this time, pursuant to  
12 the Sentencing Reform Act of 1984, impose the following  
13 sentence upon the defendant, UMC:

14 They are ordered to pay forthwith a fine of \$60 million.

15 They are then to be placed on unsupervised organizational  
16 supervised release. Well, I should say probationary period.  
17 So placed on unsupervised organizational probation for a period  
18 of three years. And in connection with that supervised -- I'm  
19 sorry -- unsupervised probation, the conditions are that:

20 They're not to commit another federal, state, or local  
21 crime.

22 They are to comply with whatever conditions ordinarily  
23 would be required by the Probation Office and agree to provide  
24 substantial assistance as set forth in paragraph 9 of their  
25 Plea Agreement.

1       They are also ordered to pay a special assessment of \$400,  
2       which is also due immediately. That is the mandatory penalty.

3       There are no charges to be dismissed because the plea was  
4       entered pursuant to a Superseding Information.

5       Are there other conditions of probation or other terms of  
6       the sentence that the parties agreed to that the Court has not  
7       imposed?

8       Ms. Vartain?

9       **MS. VARTAIN:** No. Although the Government does intend  
10      to dismiss the charges in the Indictment as it concerns UMC.

11      **THE COURT:** All right. I'm not sure if you have to  
12      because the information supercedes that document as to UMC.  
13      But in a belt-and-suspenders cautionary, I guess, action, I  
14      don't think there's anything that would preclude you from doing  
15      it.

16      Ms. Caldwell, is there anything that either needs to be  
17      clarified, added, removed, or otherwise remarked upon in  
18      connection with the sentence?

19      **MS. CALDWELL:** Yes, Your Honor. Pursuant to the Plea  
20      Agreement, the Government has agreed that it will dismiss the  
21      Indictment --

22      **THE COURT:** Okay.

23      **MS. CALDWELL:** -- originally filed as to UMC.

24      And, in addition, at the time this -- this matter has been  
25      stayed, so Your Honor may not recall it, but at the time of the

1 Indictment there was also a civil action for injunctive relief  
2 brought against UMC and Jinhua. And the Government has also  
3 agreed, pursuant to the Plea Agreement, to move to dismiss that  
4 civil action against UMC.

5 **THE COURT:** Ah. In other words, a separate action  
6 brought by the Government as opposed to the -- yes. Okay.

7 All right. And you plan to do that, Ms. Vartain?

8 **MS. VARTAIN:** I plan to do it in two parts. I can do  
9 the criminal piece on the record today, and the civil piece my  
10 office will do in writing.

11 **THE COURT:** Very good. All right.

12 If I could ask Ms. Goldsberry, a Judgment will have to be  
13 prepared by U.S. Probation. Do you need clarification or  
14 assistance in that regard at this time?

15 **MS. GOLDSBERRY:** Your Honor, I am -- I've been working  
16 on it throughout the hearing. So I think I'm good. I actually  
17 do -- since you asked, if I could ask one question.

18 **THE COURT:** Sure.

19 **MS. GOLDSBERRY:** What I did for the one special  
20 condition was I took language from the Plea Agreement. And if  
21 I could just read that to make sure. What I wrote was:

22 "The defendant will cooperate with the United States  
23 pursuant to the provisions of paragraph 9 of the Plea  
24 Agreement and shall conduct all of its operations in  
25 accordance with the laws of the United States and will

1 make the payments of all monetary amounts.

2 "UMC agrees that the cooperation provisions of  
3 paragraph 9 of the Plea Agreement shall be incorporated in  
4 the terms of its probation."

5 That -- that was the one special condition that I took  
6 away from the Plea Agreement and from our discussion today.

7 Does that make sense to everyone?

8 **MS. VARTAIN:** It does for the United States, Your  
9 Honor.

10 And thank you, Ms. Goldsberry.

11 **THE COURT:** Ms. Caldwell.

12 **MS. CALDWELL:** Yes. I apologize, but would you mind  
13 just rereading that? I apologize. I lost you a little bit  
14 there.

15 **MS. GOLDSBERRY:** Sure.

16 "The defendant will cooperate with the United States  
17 pursuant to the provisions of paragraph 9 of the Plea  
18 Agreement and shall conduct all of its operations in  
19 accordance with the laws of the United States, and will  
20 make payments of all monetary amounts.

21 "UMC agrees that the cooperation provisions of  
22 paragraph 9 of the Plea Agreement shall be incorporated in  
23 the terms of its probation."

24 **MS. CALDWELL:** Okay.

25 **MS. GOLDSBERRY:** I took that language directly from

1 the Plea Agreement when the Plea Agreement was discussing the  
2 sentence.

3 **MS. CALDWELL:** Okay. Thank you. UMC agrees with  
4 that.

5 **THE COURT:** All right. So ordered as a condition of  
6 probation.

7 Then if I could just make an inquiry of Mr. Stephens for a  
8 moment, and anyone else who wants to weigh in on this.

9 Mr. Stephens, I have a copy of the Victim Impact  
10 Statement. Usually what happens is that those statements in  
11 other cases are forwarded by, let's say, the U.S. Attorney to  
12 U.S. Probation. Probation includes them in their Probation  
13 Report. We don't have a Probation Report here.

14 Would you like to have this statement filed?

15 **MR. STEPHENS:** Yes, Your Honor.

16 **THE COURT:** All right. I think it can be. So unless  
17 I hear some reason why it can't be, even though somebody might  
18 prefer it's not included, it could be filed. It could also be  
19 filed under seal, which is ordinarily how the Probation Report  
20 would be filed.

21 So perhaps we should make it formal but under seal. And I  
22 think that's perhaps as close as what would ordinarily be the  
23 procedure if we had a Probation Report.

24 Do you have any comment about that, Ms. Goldsberry?

25 **MS. GOLDSBERRY:** I do not, Your Honor. I think in

1 this case, because it's a corporate victim, under seal may not  
2 be necessary. But, certainly, that's the way we would normally  
3 address victim letters.

4 **THE COURT:** Okay. So would you prefer it be in the  
5 public record or under seal, Mr. Stephens?

6 **MR. STEPHENS:** I'm fine with it in the public record,  
7 Your Honor.

8 **THE COURT:** Okay. So we would file that as well.

9 Then, Mr. Ybarra, I may have to talk to you after these  
10 proceedings as to how we're going to have all these documents  
11 in the docket, unless you already know how it can be done.

12 **THE CLERK:** I have an idea, Judge, but I would like to  
13 speak with you about it.

14 **THE COURT:** That's fine. Okay.

15 Now, let me just inquire, because we're about to conclude  
16 this proceeding, if there is anyone who is participating who  
17 needs to add anything to the record or have anything further  
18 addressed. Maybe I'll just go around.

19 Government counsel, Ms. Vartain?

20 **MS. VARTAIN:** Yes, Your Honor. For clarity of the  
21 record, the Government moves to dismiss UMC from Counts One,  
22 Two, and Seven of the Indictment.

23 **THE COURT:** All right. That motion is granted. And  
24 our minutes would then reflect that dismissal on the  
25 Government's motion.

1           Okay. I wonder if the Judgment ought to reflect that as  
2 well. I'm not sure if it fits into the form or not. If  
3 there's any place to put it, we'll try and incorporate it in  
4 the Judgment as well.

5           **MS. GOLDSBERRY:** It's a very tricky form, Your Honor,  
6 because it's in PDF. So I will see what I can do.

7           **THE COURT:** If it can't be done, it's a matter of  
8 record. It will be a matter of public record in the minutes.  
9 And for all practical purposes, you're not pursuing them  
10 anymore in that case. Okay.

11          What about Ms. Caldwell, anything that needs to be added,  
12 clarified or you want to take up?

13           **MS. CALDWELL:** No, Your Honor. Thank you.

14           **THE COURT:** Okay. And is there anyone else who needs  
15 to be heard before we conclude this proceeding and recess this  
16 session?

17          Okay. All right. Then hearing nothing further, thank you  
18 to everyone who actively participated. And to those of you who  
19 did not actively participate, thank you for not actively  
20 participating.

21          That will conclude these proceedings at this time.

22          And I'm going to look here. I'm about to click on  
23 "leave."

24          So that concludes the proceedings. I'm glad that you were  
25 able to resolve the matter. Good-bye to everyone both here and

1 in Taiwan.

2 **MR. CHANG:** Thank you.

3 **MS. CALDWELL:** Thank you.

4 **MS. VARTAIN:** Thank you, Your Honor.

5 (At 3:32 p.m. the proceedings were adjourned.)

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8 **CERTIFICATE OF REPORTER**

9 I certify that the foregoing is a correct transcript  
10 from the record of proceedings in the above-entitled matter.

11 DATE: Friday, October 30, 2020

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15 \_\_\_\_\_  
16 Katherine Powell Sullivan, CSR #5812, RMR, CRR  
17 U.S. Court Reporter  
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